

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Thomas Hauss,

Plaintiff,

v.

Home Depot U.S.A., Inc. & Kimco Realty Co.,

Defendants.

No. 2:23-cv-01138-KJM-JDP

ORDER


Defendant Kimco Realty Corporation has removed this action based on diversity jurisdiction. Notice of Removal, ECF No. 1. The removal statute is strictly construed, and doubts regarding the court's jurisdiction are resolved in favor of remand. *See Luther v. Countrywide Home Loans Servicing, LP*, 533 F.3d 1031, 1034 (9th Cir. 2008). Under 28 U.S.C. § 1446(b)(2)(A), "all defendants who have been properly joined and served must join in or consent to the removal of the action." "[T]he filing of a notice of removal can be effective without individual consent documents on behalf of each defendant." *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009). For example, "[o]ne defendant's timely removal notice containing an averment of the other defendants' consent and signed by an attorney of record is sufficient." *Id.*

Here, Kimco does not claim or represent the other defendant, Home Depot U.S.A, Inc., consented to removal. *See generally* Notice of Removal. Accordingly, removal is improper. The

1 Clerk of the Court is directed to remand this case to the Superior Court for the State of California
2 in and for the County of Sacramento, and to close this case.

3 IT IS SO ORDERED.

4 DATED: June 22, 2023.
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CHIEF UNITED STATES DISTRICT JUDGE